

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7184 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL CHIMANLAL BHIL

Versus

STATE OF GUJARAT

Appearance:

GIRISH PATEL ASSOC for Petitioner
MR SP HASURKAR, 1d. Addl. Govt. Pleader with
MR RC KODEKAR, 1d.Asstt.Govt.Pleader for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/12/1999

ORAL JUDGEMENT

This Special Civil Application was filed in this Court on 20th September 1999 against the petitioner's reversion order dated 13th September 1999 whereby he was reverted to the post of Superintendent, Class-III from that of Assistant Director, in the Tourism Department. On 21st September 1999 while issuing Rule, the Court also

passed an ad-interim order staying the operation of the impugned reversion order. A Caveat had been filed on behalf of the respondents on 18th September 1999, but the same was served upon the petitioner on 25th September 1999 and by that time, the Rule had already been issued and the ad-interim order had already been passed and therefore, learned Addl.Govt. Pleader has not pressed against the order of issuance of Rule and the ad-interim order on this ground. However, the affidavit-in-reply dated 13th October 1999 was filed on behalf of the respondents and thereafter, an affidavit-in-rejoinder dated 20th October 1999 had been filed by the petitioner.

2. The Civil Application No.11693 of 1999 dated 1st October 1999 appears to have been filed in this Court on 5th October 1999 with the prayer that the ad-interim order dated 21st September 1999 be vacated. The matter came up on this Civil Application today before this Court and at the time of arguments, with the consent of both the sides, the main petition itself has been taken up for final disposal.

3. There is no dispute between the parties that the petitioner is a member of ST, that he had been initially appointed in the Agriculture Department of the Govt. of Gujarat as Junior Clerk in the year 1972 and in the Agriculture Department, he had cleared the pre-training examination on 30th November 1973 and he had cleared the higher level examination on 9.9.1980 and thereafter he had also been promoted in that Department as Senior Clerk in 1982. While he was working in the Agriculture Department and while he had already worked for a period of nearly 18 years, when the post of Superintendent in the Department of Tourism was advertised to be filled up by direct recruitment, the petitioner applied for the said post of Superintendent in the Department of Tourism. The petitioner was selected for the aforesaid post and was appointed as Superintendent, Class-III by order dated 16th September 1990. He was appointed on probation for one year and on completion of one year's probation period, he was appointed on long term basis, by the order dated 2.11.1991 on the said post of Superintendent. The petitioner continued to work as Superintendent, Class-III in the Tourism Department and while working as such, he was considered for the post of Assistant Director, Class-II in Tourism Department, by the Departmental Promotion Committee and after considering the Confidential Reports of the eligible officers, the Departmental Promotion Committee recommended the petitioner for the post of Assistant Director and acting upon such recommendation, he was promoted as Assistant

Director on 27th November 1997. While the petitioner was so working as Assistant Director on being promoted, one Shri J.N.Rajput who was already working as Superintendent in the same Department raised objection against the petitioner's promotion as such. The Addl. Chief Secretary considered the objection as had been raised by Shri J.N.Rajput and afforded an opportunity of personal hearing to the petitioner on 25th September 1998. According to the petitioner, the objection raised by Shri Rajput was not accepted and the petitioner's Confidential Reports were sent to the Gujarat Public Service Commission (GPSC) while returning the Confidential Reports of two other candidates to the Department and the petitioner continued to work as Assistant Director. Said Shri Rajput who was working as Superintendent and who was Senior to the petitioner filed Special Civil Application No. 6574 of 1999 in this Court and the Court had issued the Rule on 31st August 1999 and the same was made returnable on 15th September 1999. After the notices were served, the present impugned reversion order dated 13th September 1999 has been passed and it is this order dated 13th September 1999 whereby the petitioner has been reverted to the post of Superintendent, Class-III from that Assistant Director, Class-II which has been challenged in this petition.

4. It is also not in dispute that the petitioner was required to pass the higher standard departmental examination within a period of two years from the date of his appointment as Superintendent, Class-III and the petitioner has not cared to appear in the said higher standard departmental examination after his appointment as Superintendent although according to the respondents, such examination has been held 17 times after the appointment of the petitioner as Superintendent.

5. As per Rule 3(3) of the Gujarat Information Department (Conditions of Service relating to persons in superior and subordinate Services) Rules, 1973, the petitioner was required to pass the aforesaid higher standard departmental examination within two years from the date of his appointment and whereas he has not been able to pass this examination after according promotion to the petitioner on the post of Assistant Director as per the recommendation of the Departmental Promotion Committee, when the Government found that the petitioner had not fulfilled the required condition for the post of Superintendent as he failed to pass the said examination, the impugned order reverting him to the post of Superintendent from that of Assistant Director was passed. In view of the provisions in the statutory Rules

framed under proviso to Article 309 of the Constitution, it is clear that the departmental examination as per the Rules has to be passed. However. Mr.Girish Patel has submitted that even if it is taken that the promotion had been accorded to the petitioner by mistake and that the requirement of passing the departmental examination was not noticed at the relevant time when the Departmental Promotion Committee made recommendation in his favour, now when he was sought to be reverted, he should have been afforded an opportunity of hearing. He has also submitted that in view of the fact that he had already passed the departmental examination while he was working in the Agriculture Department, he was not required to pass the departmental examination again in the Tourism Department, that after reorganisation of the department, these rules were not applicable and on that basis he should have been exempted from passing the departmental examination. Mr.Hasurkar has produced a Government Resolution dated 20th December 1991 and even according to that Government Resolution, the exemption has been given from passing the departmental examination for the purpose of giving pay scales at the end of 9, 18 and 27 years in case of those candidates who had attained the age of 45 years on or before 5th July 1991. Since the petitioner had not attained the age of 45 years on 5th July 1991 on account of attaining age of 45 years also, he cannot claim exemption and even otherwise this Government Resolution dated 20th December 1991 is meant for granting exemption for the purpose of giving higher pay scales and the same is not applicable in the cases of promotion.

6. Whereas the requirement of passing the departmental examination has been prescribed in the Rules, it is not possible for this Court to set aside the impugned order of reversion as has been passed against the petitioner on the ground of not passing the departmental examination within a period of two years from the date of his appointment as intended and even thereafter upto now. It has also not been shown as to how the rules are not applicable. However, keeping in view the submissions as have been made on behalf of the petitioner that in the facts and circumstances of this case when the mistake was noticed later on and the petitioner had already continued on the higher post since 27th November 1997 and also keeping in view the submissions made by Mr.Girish Patel on behalf of the petitioner that the course for the departmental examination which had been passed by the petitioner while he was working in the Agriculture Department and the course for the departmental examination which is prescribed in the Tourism Department is almost the same

with very minor difference, this Court finds it appropriate to pass the following order to render substantiate justice between the parties:-

- (i) The reversion order passed against the petitioner on 13th September 1999 as has been stayed by this Court on 21st September 1999 shall further remain in abeyance for a period of three months from today.
- (ii) It will be open for the petitioner to make a representation before the Government on the grounds as he may feel advised to take so as to seek exemption from passing the departmental examination as aforesaid. Such representation shall be made by the petitioner before the Government within a period of ten days from today.
- (iii) Should the petitioner make any such representation, the Government shall decide the same within a period of three months as aforesaid and the petitioner's further continuance on the post of Assistant Director will depend upon the orders which may be passed by the Government and conveyed to him.
- (iv) In case the petitioner's representation is not accepted with regard to exemption from the departmental examination, appropriate orders shall be passed by the Government so as to take effect after a period of 15 (fifteen) days from the date of receipt of such order by the petitioner. In case the order is passed before the expiry of the period of three months, the reversion order would not remain in abeyance for full period of the three months as directed at (i) as above but would remain in abeyance only until the expiry of 15 days from the date such order is served upon the petitioner.

7. With the observations and directions as aforesaid, this Special Civil Application is hereby disposed of and the Rule is hereby discharged. No order as to costs.

Sreeram.